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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,325	06/14/2001	Frank J. DeGilio	POU920010067US1/132-0001	7141

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EXAMINER
ENGLAND, DAVID E

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	**Applicant(s)**
Office Action Summary	09/881,325	DEGILIO ET AL.
	Examiner	**Art Unit**	
	David E. England	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>08 May 2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>21 – 36</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>21 – 36</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

PTOL-326 (Rev. 7-05)   Office Action Summary   Part of Paper No./Mail Date 20060820

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DETAILED ACTION

1.   Claims 21 – 36 are presented for examination.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3.   Claims 21 – 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

4.   The term " time consuming " in claims 21 and 29 are relative term which renders the

claim indefinite. The term " time consuming " is not defined by the claim, the specification does

not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art

would not be reasonably apprised of the scope of the invention.

5.   Applicant is asked to specifically recite from the specification what would it is meant to

be "time consuming" or what would be the limit or threshold for one of ordinary skill in the art

to interpret the limitation as "time consuming".

6.   Claims 22 – 28 and 30 – 36 are rejected for their separate dependency on claims 21 and

29 above.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

8.   Claims 21, 22, 24 – 30 and 32 – 36 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Servan-Schreiber et al. (6892354) (hereinafter Servan) in view of Horn

(6192414).

9.   As per claim 21, as closely interpreted by the Examiner, Servan teaches a method for

monitoring the presence of a web client from a server via a communications network,

comprising;

10.   conducting searches for data in response to receiving requests for information from web

clients, (e.g., col. 1, line 47 – col. 2, line 10 & col. 2, line 66 – col. 3, line 43);

11.   if one of the search becomes time consuming, determining a continued presence of the

web client associated with the time-consuming search, (e.g., col. 4, lines 24 – 60);

12.   waiting a specified time period, (e.g., col. 4, lines 24 – 60); and

13.   data resulting from the search becomes available after a predetermined time, (e.g., col. 1,

line 47 – col. 2, line 10 & col. 2, line 66 – col. 3, line 43), but does not specifically teach upon

sensing that one of the connections will be time consuming, determining a continued presence of

the web client associated with the time-consuming search, the determining comprising:

14.   transmitting a byte stream to the web client;

15.   waiting a specified time period;

16.   · if an error response is returned from the web client indicating the web client is no longer

present, aborting the search; and

17.   if an error response is not returned form the web client, continuing the search and

repeating the transmitting and waiting until an occurrence of at least one of:

18.   an error response is returned from the web client indicating the web client is no longer

present; and

19.   data resulting from the connection becomes available.

20.   Horn teaches a method for monitoring the presence of a web client from a server via a

communications network, comprising;

21.   upon sensing that one of the connections will be time consuming, determining a

continued presence of the web client associated with the time-consuming search, the determining

comprising:

22.   transmitting a byte stream to the web client, (e.g., col. 7, line 61 – col. 8, line 34);

23.   waiting a specified time period, (e.g., col. 7, line 61 – col. 8, line 34);

24.   if an error response is returned from the web client indicating the web client is no longer

present, aborting the search, (e.g., col. 7, line 61 – col. 8, line 34); and

25.   if an error response is not returned form the web client, continuing the search and

repeating the transmitting and waiting until an occurrence of at least one of:

26.   an error response is returned from the web client indicating the web client is no longer

present, (e.g., col. 7, line 61 – col. 8, line 34); and

27.   data resulting from the connection becomes available, (e.g., col. 7, line 61 – col. 8, line

34). It would have been obvious to one of ordinary skill in the art at the time the invention was

made to combine Horn with Servan because testing to see if a user is no longer using a

connection will give the system the ability to free up resources so they may be used elsewhere.

28. As per claim 22, as closely interpreted by the Examiner, Servan teaches transmitting data

resulting from the search to the web client in response to the occurrence of data resulting from

the search becoming available, (e.g., col. 1, line 47 – col. 2, line 10 & col. 2, line 66 – col. 3, line

43).

29. As per claim 24, as closely interpreted by the Examiner, Servan teaches the byte stream is

an advertisement, (e.g., col. 1, line 47 – col. 2, line 10 & col. 2, line 66 – col. 3, line 43).

30. As per claim 25, as closely interpreted by the Examiner, Servan teaches the specified wait

time is a tunable parameter, (e.g., col. 4, lines 24 – 60).

31. As per claim 26, as closely interpreted by the Examiner, Servan teaches the data to be

searched is returned in a web page format, (e.g., col. 2, line 49 – col. 3, line 21).

32. As per claim 27, as closely interpreted by the Examiner, Servan teaches returning a static

web page to the web client in response to receiving the request for information from the web

client, (e.g., col. 2, line 49 – col. 3, line 21).

33.   As per claim 28, as closely interpreted by the Examiner, Servan teaches the static web

page is returned to a second browser window opened by the web client, the second browser

window opened by the web client subsequent to the request, (e.g., col. 2, line 49 – col. 3, line

21).

34.   Claims 29, 30 and 32 – 36 are rejected for similar reasons as stated above.

35.   Claims 23 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Servan

and Horn as applied to claims 21 and 29 above, and in further view of Berg et al. (6674713)

(hereinafter Berg).

36.   As per claim 23, as closely interpreted by the Examiner, Servan and Horn do not

specifically teach the byte stream is a null byte stream. Berg teaches the byte stream is a null

byte stream, (e.g., col. 22, lines 25 – 44). It would have been obvious to one of ordinary skill in

the art at the time the invention was made to combine Berg with the combine system of Horn and

Servan because

37.   Claim 31 is rejected for similar reasons as stated above.

Response to Arguments

38.   Applicant's arguments filed 05/08/2006 have been fully considered but they are not

persuasive.

39.   In the Remarks, Applicant argues in substance that the term "time consuming" is

sufficiently definite at least for the reason that one of ordinary skill in the art would be

reasonably apprised for the scope of the invention.

40.   As to part 1, the term "time consuming" is indefinite because there is no determination as

to what makes it "consuming". In the claim language there is no discussion to any type of

Maximum, Minimum or Threshold that is reached for the invention to determine if a request or

"search" is "time consuming", therefore, the term is indefinite. Example, one invention cans state

that a request for a web page that takes 1 second is time consuming. But another invention might

state that a request for a web page that takes .001 seconds, is time consuming. Applicant needs to

define what "time consuming" is in their claim.

41.   In the Remarks, Applicant argues in substance that Servan-Schreiber and Horn do not

teach conducting searches for data in response to receiving request for information form web

clients.

42.   As to part 2, Examiner would like to draw the Applicant's attention to their specification.

In which, one can find the teaches of a "search" being the same as requesting a web page from a

server, page 5 et seq. Searching for a web page is not novel and has been taught by many patents,

including Servan-Schreiber and Horn.

43.   In the Remarks, Applicant argues in substance that Servan-Schreiber and Horn do not

teach if one of the searches becomes time consuming, determining a continued presence of the

web client associated with the time-consuming search, and aborting the search. Furthermore,

there is no reason to combine Servan-Schreiber and Horn stated in the prior art.

44.   As to part 3, Examiner would like to draw the Applicant's attention to the areas cited in

Horn, col. 7 et seq. In which, one can find that when a incoming message is not present the

receive manager 40 sets a counter that loops until a message is found by the receive manager 40.

Also, a health manager 42 is asked to send heart beat pulses to the client to see if the network

connection is still active, starting col. 8 et seq. Further into Horn one can also see that if the

network connection is dead. If the network connection is dead that would indicate that there is a

disconnection and once the disconnection is determined the network manager disconnect the

connection associated with the disconnection request, therefore "aborting the search".

45.   Furthermore, it is very apparent why one would combine the references cited above as

stated in Horn. One would sent pulses to a client to see if a connection still exists between the

server and the client. If one still exists, then communications continues. If one comes back as

dead then communication stops so the system does not continue to send information to that

client, col. 7 et seq.

Conclusion

46.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to David E. England whose telephone number is 571-272-3912.

The examiner can normally be reached on Mon-Thur, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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